BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

-----In the Matter of-----	)	
	)	
PUBLIC UTILITIES COMMISSION	)	DOCKET NO. 2008-0274
	)	
Instituting a Proceeding To Investigate Implementing a Decoupling Mechanism for Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited.	)	

OBJECTION OF LESLIE H. KONDO, COMMISSIONER,
TO THE ORDER FILED FEBRUARY 19, 2010

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TO THE ORDER FILED FEBRUARY 19, 2010

On February 19, 2010, Chairman Caliboso and Commissioner Cole filed an Order, approving a decoupling mechanism with a Revenue Adjustment Mechanism ("RAM") in the form jointly proposed by the HECO Companies and the Consumer Advocate. I did not participate in the decision, not at my choice but because Chairman Caliboso and Commissioner Cole believe that they do not need to allow me to participate in decisions when they agree. For the same reasons as I stated after being excluded from the decision establishing the Renewable Energy Infrastructure Program, I strongly object to being excluded from participating in the Order. See Objection of Leslie H. Kondo, Commissioner, Regarding Decision and Order Filed December 30, 2009, filed January 4, 2010 in Docket No. 2007-0416. As a commissioner, I am entitled to make an informed and independent decision and to make that decision a matter of record. Hawaii Administrative Rules ("HAR") § 6-61-121.

The commission's rules define the process that the commission must follow in issuing decisions. See id. That process unambiguously requires that every commissioner who heard and examined the evidence "shall" sign the decision, issue a dissenting opinion, or note on the decision that he does not concur with the majority. Id.[1] The Order, filed without my participation, is contrary to the procedure required under HAR § 6-61-121, and for that reason, the Order is invalid. See, e.g., Virginia Comm. for Fair Utility Rates v. Virginia Elec. & Power Co., 243 Va. 320, 328 (Va. 1992) ("When an administrative agency promulgates rules to govern its proceedings, these rules must be scrupulously observed . . . . For once an agency exercises its discretion and creates the procedural rules under which it desires to have its actions judged, it denies itself the right to violate these rules. If an agency in its proceedings violates its rules and prejudice results, any action taken as a result of the proceedings cannot stand.").

The Attorney General believes that the commission need not follow the decision-making process unambiguously required by the commission's rules. According to the Attorney General, as long

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[1]HAR § 6-61-121 provides:

> **All decisions and orders shall be signed by the commissioners who heard and examined the evidence in the proceeding** . . . . If a commissioner does not concur with the majority in a decision, that commissioner may issue a dissenting decision or sign the decision indicating that the commissioner does not concur with the majority.

(Emphasis added).

as I receive "notice," Chairman Caliboso and Commissioner Cole can exclude me from participating in decisions. In other words, the Attorney General believes that once two commissioners agree, they can make decisions without including the third commissioner simply by providing that commissioner with "notice" of their decision. In reaching that opinion, the Attorney General misconstrued the commission's rule, deciding that it is somehow inconsistent with the statute defining the number of commissioners that constitute a quorum of the commission. See Statement of Leslie H. Kondo, Commissioner, Regarding Attorney General Opinion dated February 1, 2010, filed February 9, 2010 in Docket No. 2007-0416.

Even the Attorney General's opinion, however, cannot support Chairman Caliboso's and Commissioner Cole's actions here and in Docket No. 2008-0083.[2] By memorandum dated February 4, Chairman Caliboso and Commissioner Cole provided me with "notice" of their decision to file the Order on February 19. See Memorandum to Leslie H. Kondo, Commissioner, from Carlito P. Caliboso, Chairman, and John E. Cole, Commissioner, dated February 4, 2010, attached as Exhibit "A." That notice, however, is clearly arbitrary and unreasonable.

Taken in isolation, 10 working days (from February 4 to February 19) may appear to be reasonable; however, in their

[2]By memorandum dated February 4, 2010, Chairman Caliboso and Commissioner Cole provided "notice" of their intent to file on February 19 -- the same day as the Order here -- a Decision and Order approving a second interim rate increase, which allows HECO to increase its rates by an additional $12,671,000. See Objection of Leslie H. Kondo, Commissioner, to the Decision and Order filed February 19, 2010, filed February 23, 2010 in Docket No. 2008-0083.

memorandum, Chairman Caliboso and Commissioner Cole do not note the numerous other activities on the commission's plate that required immediate commission attention, including, as an example, the panel hearing on the Clean Energy Scenario Planning docket that began on February 8 and ended on February 11. They do not reference that, by separate memorandum also dated February 4, they demanded that I make a decision on a second interim rate increase for HECO also before February 19.

Decoupling and the RAM are truly "transformational" changes for the HECO Companies and the ratepayers, significantly altering the State's regulatory framework by shifting substantial risk from the HECO Companies to its ratepayers. Because of the significance of the decoupling mechanism and RAM, as I explained to Chairman Caliboso and Commissioner Cole, to make an informed and reasoned decision, I cannot responsibly do so by February 19. See Memorandum to Carlito P. Caliboso, Chairman, and John E. Cole, Commissioner, from Leslie H. Kondo, Commissioner, dated February 18, 2010, attached as Exhibit "B."[3] Moreover, given the recent filing by the HECO Companies stating that the Hawaii Electric Light Company and Maui Electric Company systems cannot accommodate any additional renewable resources, I believe that it is necessary to closely examine whether decoupling is truly needed,[4]

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[3]In the past, in an attempt to justify excluding me from the decision-making process, Chairman Caliboso and Commissioner Cole filed their "notice" to me. Unfairly, they did not include my response. I believe that it is necessary and appropriate for the record to be complete.

[4]Under the Hawaii Clean Energy Initiative agreement, it appears that the parties agreed that a decoupling mechanism was needed to

something that cannot be reasonably completed within Chairman Caliboso's and Commissioner Cole's arbitrary deadline.

It simply is unreasonable to demand that I make a decision in this docket as well as on the second interim rate increase by February 19 -- 10 business days to make informed and reasoned decisions that have significant financial and other impacts to HECO, to the ratepayers and to the State.

In summary, because I believe that both the commission's rules and the general principles inherent in the three commissioner structure established by the legislature require that every commissioner be allowed to participate in commission decisions and to make those decisions part of the record, I object to Chairman Caliboso's and Commissioner Cole's filing of the Order. As I have stated previously, Chairman Caliboso's and Commissioner Cole's actions create substantial -- and unnecessary -- regulatory uncertainty for HECO and do not serve the public interest.

DONE at Honolulu, Hawaii FEB 23 2010.

By _____
Leslie H. Kondo, Commissioner

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support the HECO Companies' commitment to incorporate substantial amounts of renewable energy onto their grids.

LINDA LINGLE
GOVERNOR

CARLITO P. CALIBOSO
CHAIRMAN

JOHN E. COLE
COMMISSIONER

LESLIE H. KONDO
COMMISSIONER

STATE OF HAWAII
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MEMORANDUM

TO: LESLIE H. KONDO, COMMISSIONER

FROM: CARLITO P. CALIBOSO, CHAIRMAN
JOHN E. COLE, COMMISSIONER

C: BKK, SKD, KKS

SUBJECT: DOCKET NO. 2008-0274 DECOUPLING INVESTIGATION
PROPOSED ORDER

DATE: **FEBRUARY 4, 2010**

We opened this investigation with an Order Initiating Investigation on October 4, 2008. The last pleading was filed in this matter on December 28, 2009, with the Hawaiian Electric Company, Inc.'s filing of its Proposed Interim Decision and Order. No other evidence, briefs, or presentations are prescribed to be filed in this matter.

A proposed order was circulated for review on February 1, 2010, at Carl's request as his proposal. Based on your email dated February 1, 2010, and your email dated February 2, 2010, we understand that you disagree with the proposed order. John approved the proposed order by email on February 3, 2010.

Accordingly, the majority is ready to issue the proposed order. We believe that it is important to issue this decision as soon as possible. Although it is clear that you have made your decision concerning the proposed order, we will give you until February 18, 2010 to either (1) if you concur, sign the proposed order, or (2) if you do not concur, sign the proposed order indicating that you do not concur or sign a dissenting opinion, as provided under HAR § 6-61-121. If you need more time, you are free to file a separate statement at a subsequent date at your convenience.

In any event, we have instructed staff to issue and file the order on February 19, 2010, which we will have already executed. Thank you for your cooperation.

EXHIBIT A

LINDA LINGLE
GOVERNOR

CARLITO P. CALIBOSO
CHAIRMAN

JOHN E. COLE
COMMISSIONER

LESLIE H. KONDO
COMMISSIONER

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February 18, 2010

TO: Carlito P. Caliboso, Chairman
John E. Cole, Commissioner

FROM: Leslie H. Kondo, Commissioner

C: Brooke K. Kane, Administrative Director
Stacey K. Djou, Chief Counsel
Kaiulani K. Shinsato, Staff Attorney

SUBJECT: Docket No. 2008-0083, Second Interim Decision and Order
Docket No. 2008-0274, Decoupling Investigation

I am in receipt of your two memoranda, both dated February 4, 2010, informing me that, on February 19, you intend to file orders approving a second interim rate increase and a decoupling mechanism, respectively, even if I have unresolved questions about the decisions and, for that reason, cannot agree or disagree with the decisions.[1] I am compelled to respond to your memoranda to address your attempt to create a misleading record to support you excluding me from participating in the decisions and your ongoing efforts to mislead people outside of the commission into believing that I am not responsibly performing my duties as a commissioner.

Second Interim Decision and Order, Docket No. 2008-0083

Your memorandum provides a very incomplete and misleading picture relating to the Second Interim Decision and Order. It is unfair and disingenuous for you to attempt to portray my insistence that I be allowed to make an informed decision as being unreasonable.

[1] I did not have an opportunity to respond to your memoranda earlier. As you know, during the week of February 4, I was reviewing numerous filings and other materials in preparation for the panel hearing in the Clean Energy Scenario Planning docket and from February 8 through 11, the commission was involved in the panel hearing.

EXHIBIT B

I received your email on February 1, informing me that you wanted to file the decision by February 4. I responded to you, explaining that I was struggling with some of the reasoning in the proposed Second Interim Decision and Order, specifically relating to whether the combustion turbine unit ("CT-1") was "used and useful" during the 2009 test year. Although I disagree, you are adamant that the Decision and Order in Docket No. 05-0145, approving the expenditure of funds to build CT-1, requires HECO to operate CT-1 using only 100% biofuels. Given that position and the fact that HECO does not have a permanent supply of biofuel, it seems inconsistent to conclude that CT-1 was "used and useful" during the 2009 test year simply because the unit was connected to the grid. HECO's ongoing efforts to procure a permanent supply of biodiesel do not resolve that inconsistency, especially in light of the commission's previous rejection of HECO's contract with Imperium to supply biodiesel for CT-1. I am trying to understand if the Second Interim Decision and Order unreasonably and imprudently distorts prior commission precedent and general regulatory principles.

Moreover, the National Regulatory Research Institute ("NRRI"), the commission's consultant in this docket, disagrees with the commission's reasoning. In NRRI's opinion, it is "unlawful" for the commission to declare CT-1 to be "used and useful."

> The Commission will not -- and under its statute cannot --- find the plant "actually used or useful" until it is capable of running lawfully. The plant is capable of running lawfully only when it is capable of running in the manner required by the Commission's prior orders and the Company's legal commitments: as a plant capable of providing firm peaking power while running on biofuels.
>
> The plant will be "actually use or useful," therefore, only when there is a contract to supply biofuel to the plant, in the quantities sufficient to allow the plant to provide firm peaking power reliably. The facts on this record do not support such a finding.

NRRI Internal Memorandum dated January 7, 2010. As you know from my earlier response to you, I spent an hour on January 26 discussing the issue with Adam Pollock of NRRI.[2] While that discussion was helpful, it did not resolve my discomfort with the reasoning in the proposed Second Interim Decision and Order or help me to better understand how NRRI's position may be read to be consistent

[2] I assume that you have spoken with Mr. Pollock or Scott Hempling about NRRI's position and have some reasonable basis for discounting that opinion. Unfortunately, you have not included me in those discussions with NRRI or conveyed NRRI's explanation to me.

with the Second Interim Decision and Order. Unfortunately, I must do further work to resolve those questions.

In my response to you, I also explained that I could not commit to resolving my outstanding concerns about the Second Interim Decision and Order before February 4 because I was reviewing the numerous filings and other materials in preparation for the following week's panel hearing in the Clean Energy Scenario Planning ("CESP") docket. That hearing started on February 8 and ended on February 11.

On February 2, you asked whether I would "agree" to file the Second Interim Decision and Order on February 19. I responded by email to you, suggesting that March 5 was a more realistic target date for me to make an informed decision about the Second Interim Decision and Order.

> I think a more realistic target date is March 5. I will hopefully resolve my issues before then but I do not want to provide you with a target date that is unrealistic. I will note that the week of February 8 we will be in the CESP hearing, which takes considerable time and energy. The week of February 15 is a short week, with the Presidents' Day holiday. And, the following week, we will be in Hilo and Kona for the majority of 2 days and also have a public hearing in Whitmore Village on another day.

I never received a response to my email. Rather, on February 4, you provided me with your memorandum, which summarily states that it would be unreasonable to delay the commission's decision until March 5 and affirms your intent to file the Second Interim Decision and Order on February 19, even if I have not had an opportunity to resolve my questions about the decision. Two weeks -- that is the difference between filing the decision on February 19, as you intend to do, and March 5, the date by which I thought I could resolve my outstanding questions.[3] You believe that it is unreasonable to allow me two weeks to make an informed decision on an issue that is of significant importance to both the company and its ratepayers. Two weeks?!? As with the Renewable Energy Infrastructure Program ("REIP") Decision and Order, there is absolutely no reason that the Second Interim Decision and Order must be filed on February 19.[4] It is simply an arbitrary

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[3] In your memorandum, you state that "it is unreasonable to delay the decision an additional month." That statement, on its face, is clearly inaccurate. The difference between February 19 and March 5 is two weeks, not "an additional month."

[4] You refused to explain your insistence that the Decision and Order approving the REIP be filed by December 30. I had explained to you that it made no practical difference whether the Decision and Order was filed on December 30, January 31 or February 28. As predicted, the HECO

deadline. More disturbing is that, by providing you with a realistic target date, which given the commission's workload is very reasonable, I was attempting to balance your desire to file the decision with an opportunity for me to make an informed decision. Your response, however, reflects that you seemingly had no intention of allowing me a reasonable chance to resolve my concerns about the decision before you filed the Second Interim Decision and Order.

Given NRRI's unambiguous opinion that the unit cannot "lawfully" operate without a permanent biodiesel supply and, therefore, cannot be considered "used and useful," I believe that it is necessary to fully understanding whether the "used and useful" analysis in the Second Interim Decision and Order is reasonably supported. I also feel that it may be unwise to permanently distort prior commission precedent[5] and general regulatory principles simply to achieve a desired result. I am trying to make an informed and responsible decision about the Second Interim Decision and Order. If you have answers or can help address my concerns, I welcome your input. Frankly, the questions that I have raised here as well as in other dockets are consistently met with your silence. I do not know if you, like me, do not understand the details of certain proposals or you simply do not want to help me resolve my questions.

Lastly, your attempt to blame me for delaying the filing of the Second Interim Decision and Order is simply outrageous. As you know, starting many, many months ago (many months before HECO's Motion for Second Interim Increase), I argued that the commission should allow HECO to operate CT-1 on petroleum diesel until the company is able to secure a permanent supply of biodiesel. As I had explained, letting HECO do so would result in a "win-win" for the company and the ratepayers: it would allow HECO to recover the cost of CT-1 in rates and, at the same time, ratepayers would benefit from the lower operating and maintenance costs associated with a new, more efficient generating unit. Moreover, given the company's ongoing efforts to procure biodiesel, efforts that the commission can actively monitor, it would not be inconsistent with the State's energy goals to allow HECO to temporarily operate CT-1 using petroleum diesel. Commission staff likewise recommended approving the use of petroleum diesel on a temporary basis until biodiesel was available. On each and every occasion, however, you summarily rejected that suggestion, insisting that the unit operate only using biodiesel and not even allowing any discussion of that option.

Companies have not sought to recover any costs through the REIP to date. Moreover, it is very likely that I would have resolved my and staff's concerns about the proposed mechanism by now if you had just allowed me a reasonable opportunity to do so.

[5] See, e.g., Decision and Order No. 13950 in Docket Nos. 7579, 7524, 7523, 7193, and 6404 (consolidated); Decision and Order No. 24085 in Docket No. 2006-0409.

On January 14, I received a copy of the proposed Second Interim Decision and Order, which states that "the commission finds it appropriate to temporarily allow HECO to operate CT-1 as a diesel peaking unit." What?!? After repeatedly rejecting the suggestion, you now are agreeing to allow HECO to operate CT-1 on petroleum diesel?!? I do not understand why you changed your position on the use of petroleum diesel. I do not know why you did not agree to allow HECO to operate CT-1 using petroleum diesel when I and staff repeatedly suggested that option. I do know, however, that, if you had agreed to petroleum diesel before December 31 -- i.e., 14 days earlier -- there would be no issue about whether the unit was "used and useful" during the test year. In accordance with the commission's precedent and general regulatory principles, it would be undisputed that HECO should recover the cost of the unit in this rate case. The tension -- as clearly reflected in NRRI's opinion -- to interpret the commission's condition that the unit operate on 100% biofuels consistently with a determination that the unit is "used and useful" without such fuel would be moot. In other words, if you had decided 14 days sooner to allow HECO to operate CT-1 on petroleum diesel, the Second Interim Decision and Order could have been filed well-before today, probably in early January, and HECO would be recovering the cost of the unit through its rates.

Decoupling, Docket No. 2008-0274

I am much more troubled by your insistence that the decoupling order be filed on February 19. As you know, decoupling will result in a significant change in the manner in which HECO recovers its costs. From a regulatory standpoint, it is truly a "transformational" change, shifting much of HECO's risk to its ratepayers. Instead of its revenues being based on the amount of electricity it sells, HECO will be "guaranteed" a certain amount of revenue. In other words, if ratepayers use less electricity, each ratepayer will pay more for a unit of energy to allow HECO to earn its "guaranteed" revenue. Especially given the State's current economy -- State employee furloughs and layoffs, record numbers of foreclosures and bankruptcies, high unemployment -- it is imprudent and irresponsible to rush to approve a mechanism that is likely to result in additional costs to ratepayers -- perhaps significant additional costs -- before thoroughly understanding the proposed mechanism, the HECO Companies' need for the mechanism and the likely ratepayer impacts of the mechanism.

Contrary to your memorandum, I have not made a decision about the "Minute Order." I have many unanswered questions about decoupling and the Revenue Adjustment Mechanism ("RAM"), in general; about the mechanism proposed by the HECO Companies and the Consumer Advocate, which the "Minute Order" approves; about the other parties' comments and proposals; and about commission

staff's concerns and recommendations. By itself, I could not reasonably make an informed decision about decoupling by February 19. You, however, demand that I make a decision relating to decoupling and CT-1 by that date. Your demand is absolutely unreasonable. A more complete picture than what you included in your memorandum amply illustrates the unreasonableness of your demand.

As your memorandum states, I received the "Minute Order" on February 1. Before reviewing that document, I had no understanding that you intended to adopt the HECO Companies' and the Consumer Advocate's Joint Final Statement of Position. In other words, I first learned that "the commission" was approving a decoupling mechanism from the "Minute Order." While you may have discussed the decision with each other, except for very general teleconferences with NRRI, I was never included in any discussion about, for instance, whether the HECO Companies had established that a decoupling mechanism with a RAM is necessary for their financial stability and is in the public interest. Similarly, we never discussed the merits of any of the parties' proposals, including the mechanism proposed by the HECO Companies and the Consumer Advocate, with any degree of specificity. As a three member commission, we need to collectively discuss and decide matters. Dictating decisions to one commissioner without first involving that commissioner in the deliberation process renders the three member structure meaningless.

I also find it unsettling that you insist that I make a decision on such a "transformational" mechanism without the benefit of considering and discussing commission staff's concerns and recommendations. On February 1 -- the same day that I received the "Minute Order" -- I also received staff's memorandum relating to the docket. Because of other commission matters, such as the CESP panel hearing, I have not had an opportunity to read and digest the memorandum; I have not had an opportunity to discuss the memorandum with staff; I have not had an opportunity to learn and understand staff's recommendations, which do not appear to be part of the memorandum.

Moreover, as you should recall, during the most recent teleconference with NRRI, a key member of the commission's Hawaii Clean Energy Initiative ("HCEI") team unambiguously recommended that the commission reject decoupling. Although NRRI is a valuable resource, in my opinion, commission staff's comments and recommendations are, at the very least, equally valuable and cannot be ignored, especially given the significance of this docket. Commission staff provides valuable Hawaii-specific knowledge that NRRI lacks, and it is that Hawaii-specific knowledge that is truly important as the commission considers implementing a number of mechanisms that will significantly alter the State's regulatory landscape. For that reason, I assumed, apparently wrongly assumed, that you would want to further explore the reasons for the staff member's position, as well as other staff

members' concerns and recommendations and would convene another meeting with commission staff to do so. Since that does not appear to be likely, I will talk with staff to better understand their positions on the proposed decoupling and RAM mechanisms. It simply would be imprudent and irresponsible for me to decide decoupling without staff's input.

I am also concerned that, in your rush to approve the HECO Companies' and the Consumer Advocate's proposed mechanism, you have not thoroughly considered the other parties' filings. The other parties have provided thoughtful and reasoned comments about decoupling, including the HECO Companies' and the Consumer Advocate's proposed mechanism. Yet, the "Minute Order" ignores all of those comments and, instead, approves the mechanism in the exact form proposed by the HECO Companies and the Consumer Advocate. In other words, you do not find significant enough to include in the decision any of the information developed during the panel hearing or included in the post-hearing comments from the parties.

As a related example, in the Feed-In Tariff docket, Docket No. 2008-0273, the HECO Companies recently filed proposed reliability standards, which state that the Hawaii Electric Light Company ("HELCO") and Maui Electric Company ("MECO") systems cannot accommodate any additional renewable resources.

> Due primarily to the high level of existing and planned renewable resource penetration on the MECO and HELCO systems, the studies indicate that there is minimal to no room at this time to accommodate additional renewable resources (FIT or otherwise) without significant curtailment of either existing or planned renewable resources, or a threat to system reliability. The impact of this determination is that the integration of FIT resources on the HELCO and MECO systems may have to be temporarily deferred until additional studies can be performed and/or infrastructure developed, so that additional distributed renewable generation can be integrated on these systems without threatening system reliability or causing significant curtailment of other renewable generation.

Proposed FIT Reliability Standards for the Hawaiian Electric Companies filed February 8, 2010, at 4 (footnote omitted) (emphasis added).

As I recall, DBEDT, among others, asserted that decoupling is intended to be the "quid-pro-quo" for the HECO Companies incorporating more renewable energy onto their respective grids. Even the HECO Companies argued that decoupling is necessary to provide financial stability to allow them to aggressively pursue the

clean energy goals outlined in the HCEI agreement. If, however, the HELCO and MECO systems cannot accommodate any more renewable resources, i.e., those utilities will in essence operate "business-as-usual," perhaps there is no current need to approve a decoupling mechanism for those utilities. At a minimum, especially given the significant financial impact that decoupling may have on ratepayers, I believe that it is necessary for the commission to examine, in a broad perspective, whether the HECO Companies are making real and significant efforts towards the clean energy goals to support decoupling or, perhaps, to justify the need for a RAM.

Lastly, as I noted above, your belief that I have made a decision about the "Minute Order" is incorrect. I disagree with the procedure that you have chosen but, as explained above, have not decided the merits of the decoupling mechanism and the RAM. For a "transformational" mechanism such as decoupling, I do not think that it is appropriate to issue a "Minute Order" that contains no reasoning to support the commission's decision. Frankly, if the commission believes that decoupling should be implemented, the commission should know exactly the reasons, and be able to persuasively articulate those reasons, that justify the decision. I do not agree that the commission should rely on the HECO Companies to guess at (or, worse yet, to create) the commission's reasoning to support a "transformational" shift in regulatory policy -- it is akin to asking the fox to design a plan to guard the hen house.

This Must Stop

We simply must work together productively. Although you may disagree that the commission's rules require all three of us to participate in commission decisions, excluding a commissioner from the decision-making process is just plain wrong and is contrary to the public interest. As I have said before, doing so benefits nobody.

I previously suggested that we meet to identify the dockets that are priorities and to establish realistic targets for issuing specific decisions. As I mentioned before, I did not consider the REIP docket to be a commission priority and certainly understood that it was not a priority from the HECO Companies' perspectives. I am concerned that we are not on the same page as to which dockets deserve immediate attention. Of the 95 dockets that are listed on the most recent docket status report, more than half of those dockets are identified as priority "A," i.e., a top priority for the commission. It simply is not useful to identify so many dockets as a top priority. However, during our meeting, you refused, without any explanation, my suggestion to try to prioritize our dockets or to create realistic targets. You offered no alternatives, simply indicating your intent to do "business as usual." It, however, cannot be "business as usual." The commission has too many pending dockets,

many of which are truly a high priority, to leave the priority and target issues to each commissioner's individual discretion.

It is very clear that your and my approaches to analyzing issues are very different. If we are to work productively together, we must respect each other's work style and respect the decision-making process. I again suggest that we, together, determine which dockets are truly priorities and establish realistic targets for those dockets, considering the commission's many firm deadlines, statutory requirements and other commitments. If you have other reasonable suggestions that will help us work better together, I am willing to talk about them.

I also had suggested that the three of us, jointly, submit a letter to the editor in response to the article that appeared in the February 1 edition of the Honolulu Advertiser. As I described, I thought that we should explain that my statement in the REIP docket was limited to that docket and did not reflect a systemic problem with the commission's decision-making process. I further suggested that we express our commitment to doing the commission's business of regulating the public utilities while balancing the public interest. To this day, I have not received any response to my suggestion from either of you.

By suggesting that we set priorities and jointly address the Honolulu Advertiser article, I attempted to move us past the disagreements so that we can focus on doing our real work. While I do not understand your reasons for rejecting my efforts, I can emphatically state that your decision to continue writing memoranda that are only for the purpose of misleading outsiders into believing that I am not doing my job is not working towards that objective. If we are to work productively together, you must stop attacking my work ethic and character.

As you know from my filing in the REIS docket, I disagree with the Attorney General's opinion concerning the validity of commission decisions signed by only two commissioners. For the reasons stated in my statement, I continue to believe that such decisions are invalid. However, whether the decisions are valid or not has stopped being the important issue. Instead, the issue is how to work together, respecting each other's needs to make what, to each of us, is an informed and prudent decision. To continue on the current path will only cause more damage -- needless damage -- to the regulated utilities, to the public interest, and to the commission.

I again am asking that you not file the decisions on February 19. As I have said above, I cannot reasonably and responsibly decide either docket by that date. I do not want to continue publicly airing our disputes, but if you file the decisions without my participation, I will file statements in those dockets objecting to you

excluding me from the process, expressing my opinion that the decisions are invalid, and insuring that the record accurately reflects my reasons for being unable to make an informed decision by your deadline.

CERTIFICATE OF SERVICE

The foregoing Objection was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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